

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4118 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

HARMANBHAI GORDHANBHAI PATEL

Versus

SUDHABEN GORDHANBHAI PATEL

THRO.P.O.A.THAKOREBHAI C PATEL

Appearance:

1. Special Civil Application No. 4118 of 2004
MR BHARAT T RAO for Petitioner No. 1
MRS NISHA M PARIKH for Respondent No. 1
NOTICE SERVED for Respondent No. 1,4
MR SK BUKHARI for Respondent No. 2
RULE SERVED for Respondent No. 2
GOVERNMENT PLEADER for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH
Date of decision: 23/08/2004

ORAL JUDGEMENT

In this petition, Rule is already issued and
notice as to interim relief is issued. However, in the
facts and circumstances of the case and with the consent

of parties the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat, dated 12th/19th March 2004 in Revision Application No. 27 of 2003 in rejecting the revision application and confirming the order passed by the Collector, Vadodara dated 28th May 2003 passed in RTS/Suo Motu/Remand Case No. 13/2000 with respect to Entry No. 2110 dated 28.3.1978 and Entry No. 2506 dated 8.9.1997 with respect to the land in question.

3. One Shankarbhai Jesangbhai Vaghela was owner of land bearing Revenue Survey No. 484/1 admeasuring 66 acres and 77 sq.mtrs. of land situate at Village Poicha, Taluka Savli, District-Vadodara. Similarly, one Bhimsinh Jesangbhai Vaghela was owner of land bearing Survey No. 485 admeasuring 45 acres and 63 sq.mtrs. of land situate at Village Poicha. The aforesaid two lands came to be sold by the original land-owners to Gordhanbhai Patel by registered Sale Deed dated 1.6.1970 and necessary entry to that effect was also mutated in the revenue record vide entry No. 2110 dated 28.3.1978. It seems that the said entry was objected to and the Mamlatdar, Savli treated the same as disputed entry and ultimately by order dated 18.9.1989 the Mamlatdar confirmed the said entry No. 2110 dated 28th March 1978. It seems that thereafter the respondent No.1 Sudhaben Gordhanbhai Patel, through her power of attorney had sold the aforesaid land in question to the petitioner by registered sale deed and necessary entry to that effect was made vide entry No. 2506 dated 8.9.1997 and the said entry also came to be certified on 27.10.1987 on condition that the aforesaid lands to be considered as joint land.

4. The Collector, Vadodara, was of the opinion that by aforesaid entries and the transaction there was a breach of Section 63 of the Bombay Tenancy and Agricultural Lands Act ["Tenancy Act" for short] and also of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act ["Fragmentation Act" for short] and therefore the aforesaid two entries came to be taken in suo motu review by the Collector, Vadodara. By judgment and order dated 30th September 1998 the Collector, Vadodara, cancelled both the aforesaid entries, i.e., entry No. 2110 dated 28.3.1978 and entry No. 2506 dated 8.9.1997 by holding that there

is breach of provisions of the Fragmentation Act as well as Sec. 63 of the Tenancy Act.

5. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Vadodara, dated 28th May 2003 in RTS/Suo Motu/Remand Case No. 13 of 2000, the petitioner preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as Revision Application No. 27 of 2003 and the Secretary (Appeals) by order dated 12th March 2004 dismissed the said revision application confirming the order passed by the Collector, Vadodara, dated 28th May 2003 in quashing and setting aside the aforesaid entries No. 2110 and 2506.

6. Being aggrieved and dissatisfied with the judgment and order dated 12th March 2004 passed by the Secretary (Appeals) in Revision Application No. 27 of 2003 dismissing the same and confirming the order passed by the Collector, Vadodara dated 28th May 2003 in Remand Case No. 13 of 2000 in setting aside entry No. 2110 which was in favour of Sudhaben and Entry No. 2506 in favour of the petitioner, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

7. Shri BT Rao, learned advocate appearing on behalf of the petitioner has submitted that the order passed by the Collector quashing and setting aside the aforesaid entries is without any jurisdiction and authority under the law and by the aforesaid transaction there would be breach of Section 63 of the Tenancy Act as well as provisions of the Fragmentation Act. He has submitted that while exercising the revisional jurisdiction in RTS proceedings the revenue authority has no jurisdiction to consider whether there will be breach of any other law or not. He has further submitted that the same is to be decided by the appropriate authority under the Act which is alleged to have been violated, however the same cannot be set aside in an RTS proceeding. He has relied upon the judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) G.L.R. Page 113, and also the judgment of this Court in the case of Siddharth B. Shah and others vs. State of Gujarat, reported in 1999 (3) GLR Page 2527 and also in the case of L.Rs. of Popat Khima Ramani and Ors. vs. Collector, Rajkot and Ors., reported in 2003(1) G.L.H. 30 in support of his submissions and requested to quash and set aside the order passed by the revisional authority as well as the Collector and restore the

Entries No. 2110 dated 28th March 1978 and 2506 dated 8.9.1997.

8. On the other hand, Shri SK Bukhari, ld. advocate appearing on behalf of the original land owner has tried to support the judgment and order passed by the Collector, Vadodara as well as the revisional authority. He has submitted that in view of the fact that the purchaser-petitioner and Sudhaben were not agriculturists the transaction in their favour is absolutely void and there will be breach of Section 63 of the Tenancy Act and therefore the entries are rightly cancelled by the Collector and confirmed by the revisional authority. He has further submitted that in fact as a result of the aforesaid two entries there was fragmentation of the land and it will be in breach of the Fragmentation Act and therefore also Entry No. 2110 dated 28th March 1978 and Entry No. 2506 dated 8.9.1997 are rightly set aside by the Collector as well as by the revisional authority.

9. Mrs. Nisha M. Parikh, learned advocate appears for Sudhaben Gordhanbhai Patel. She has submitted that in fact the finding of the Collector that Sudhaben G. Patel was not the agriculturist is not correct and in fact she was holding the agricultural land and at the relevant time when she purchased the land in question she was an agriculturist, and therefore there is no question of breach of provision of Section 63 of the Tenancy Act. She therefore requested that the order passed by the Collector, Vadodara in setting aside the entries No. 2110 and 2506 be set aside. Shri Sood, learned AGP has tried to support the orders passed by both the authorities below. He has submitted that in view of the fact there is breach of Section 63 of the Tenancy Act as well as provisions of Fragmentation Act the authorities were justified in setting aside the aforesaid entries.

10. Heard the learned advocates appearing for the parties. The Collector, Vadodara has taken the aforesaid entries No. 2110 and 2506 in suo motu review exercising power under Rule 108(6) of the Bombay Land Revenue Rules. As held by this Court in the aforesaid three judgments (Supra), the revenue authorities in RTS proceedings have no jurisdiction to decide the validity of the transaction and to consider the case whether there will be any breach of any other law or not. As held by this Court, the same is required to be done by the appropriate authority under appropriate law after giving opportunity to the concerned parties but such jurisdiction is not vested in the revenue authority while exercising power in RTS proceeding and under Rule 108(6) of the Bombay Land

Revenue Rules. In the present case, Entries No. 2110 and 2506 have been set aside by the Collector, Vadodara, on the assumption that by the aforesaid transaction there will be breach of Section 63 of the Tenancy Act as well as provisions of the Fragmentation Act which is not permissible as held by this Court in the aforesaid three judgments. Under the circumstances, the judgment and order passed by the revisional authority, i.e. Secretary (Appeals) dated 12th March 2004 in Revision Application No. 27 of 2003 as well as the order passed by the Collector dated 28th May 2003 in RTS/Suo Motu/Remand Case No.13 of 2000 in setting aside Entries No. 2110 and 2506 dated 28th March 1978 and 8th September 1997 are required to be quashed and set aside and are hereby quashed and set aside. Entries No. 2110 and 2506 dated 28th March 1978 and 8th September 1997 are hereby restored. It is, however, made clear that this Court has not gone into the validity of the transaction between the parties. It will be for the appropriate authority to consider whether the aforesaid transaction is in breach of provisions of the Tenancy Act and/or Fragmentation Act or not. The aforesaid observations are made only for the purpose of considering the entries in the revenue record.

11. For the reasons stated hereinabove, the petition succeeds. Rule is made absolute to the aforesaid extent with no order as to costs.

rmr. [M.R. Shah, J.]